

## RESOLUTION NO. 2428

### A RESOLUTION ACCEPTING A PERPETUAL NONEXCLUSIVE UTILITY EASEMENT ALONG NE HARLOW ROAD FROM BRD LANDING, LLC

#### THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. BRD Landing, LLC is the owner of the real property at 853 NE Harlow Road that is being developed.
2. The City typically requires public utility easements adjacent to rights-of-way in the City.
3. As a condition of development, BRD Landing, LLC was required to dedicate an eight foot wide public utility easement on the NE Harlow Road frontage and has provided signed easement documents of a form and content that is in accordance with the requirements of the City (attached).

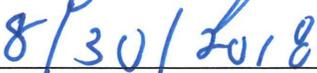
#### NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TROUTDALE

Section 1. The City of Troutdale accepts the public utility easement from BRD Landing, LLC, included herewith as Attachment A, for the construction, installation, operation, maintenance, repair, and/or modification of utility system or components thereof.

Section 2. This resolution is effective upon adoption.

**YEAS: 7**  
**NAYS: 0**  
**ABSTAINED: 0**

  
\_\_\_\_\_  
Casey Ryan, Mayor

  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Sarah Skroch, City Recorder  
Adopted: August 28, 2018

After recording, return to:  
City Recorder  
City of Troutdale  
104 SE Kibling Avenue  
Troutdale, OR 97060

## **UTILITY EASEMENT AGREEMENT**

This Public Utility Easement Agreement ("AGREEMENT") is entered into by BRD Landing, LLC, an Oregon limited liability company ("GRANTOR"), and the CITY OF TROUTDALE, an Oregon municipal corporation ("GRANTEE"), as of the date the GRANTOR signs the Certificate of Grantor.

### **RECITALS**

A. GRANTOR owns the property described in this Agreement under paragraph 10 (the "Easement Area"). GRANTOR also owns other real property adjacent to and in the vicinity of the Easement Area.

B. GRANTEE is a municipal corporation in the State of Oregon which owns and operates public utilities.

C. The purpose of this Agreement is to grant a utility easement to GRANTEE for access and use of the Easement Area.

### **EASEMENT GRANTED**

1. **Grant.** For no dollars but for other good and valuable consideration that is acknowledged and received, GRANTOR hereby grants to GRANTEE, and GRANTEE hereby accepts from GRANTOR, a perpetual nonexclusive easement for the Easement Area so that GRANTEE may construct, install, operate, maintain, repair, replace, and/or modify components of public utility systems including, but not solely limited to, water, sanitary sewer, transportation, and storm water systems.

2. **Limitations.** GRANTOR shall not construct, install, nor place any structure, pavement, or vegetation within the Easement Area except for shallow-root grasses and low-growing shrubs (but not trees), fences as permitted by applicable City regulations, and sidewalks or driveways. Any damages to GRANTEE's utilities caused by GRANTOR's construction, installation, or placement of shallow-root grasses, low-growing shrubs, fences, sidewalks, driveways, or any unauthorized structures, pavement or vegetation, within the Easement Area shall be repaired or replaced by GRANTOR, or by the GRANTEE at the GRANTOR's expense, as determined by the GRANTEE.

3. **Use and Access.** GRANTOR shall allow GRANTEE unrestricted access to the Easement Area at all times to properly construct, install, operate, maintain, repair, replace, and/or modify its utilities. Any loss, damage, or destruction caused by GRANTEE to GRANTOR's property in accessing the Easement Area or in performing the aforementioned actions, whether or not such loss, damage or destruction was to GRANTOR's shallow-root grasses, low-growing shrubs, fences, sidewalks or driveways that are allowed in accordance with paragraph 2, shall be the responsibility of GRANTOR.

4. **Binding Effect, Run with the Land.** This Agreement shall run with the land as to all real property burdened and benefited, and shall inure to the benefit of GRANTOR, GRANTEE and their respective successors and assigns.

5. **Attorney Fees.** In the event legal action is commenced in connection with this Agreement, the prevailing party in such action shall be entitled to recover its reasonable attorney fees and costs incurred in the trial court and any appeal therefrom. The term "action" shall be deemed to include action commenced in the Bankruptcy Court of the United States and any other court of general or limited jurisdiction. The reference to "costs" includes, but is not limited to, deposition costs (discovery and otherwise), witness fees (expert and otherwise), out-of-pocket costs, title search and report expenses, survey costs, surety bonds and any other reasonable expenses.

6. **Severability.** If any portion of this Agreement shall be invalid or unenforceable to any extent, the validity of the remaining provisions shall not be affected thereby.

7. **Integration.** This Agreement constitutes the entire, final and complete agreement of the parties pertaining to this utility easement, and supersedes and replaces all other written and oral agreements heretofore made or existing by and between the parties or their representatives insofar as the Easement Area is concerned. Neither party shall be bound by any promises, representations or agreements except as are expressly set forth herein.

8. **Governing Law.** This Agreement shall be construed in accordance with and governed by the laws of the state of Oregon. The parties agree to venue in Multnomah County, state of Oregon.

9. **Nonwaiver.** Failure by either party at any time to require performance by the other party of any of the provisions in this Agreement shall in no way affect the party's rights under the Agreement to enforce the provisions in this Agreement, nor shall any waiver by a party of the breach of the provisions in this Agreement be held to be a waiver of any succeeding breach or a waiver of this nonwaiver clause.

10. **Easement Area.**

*See Exhibits A & B attached to this document.*

CERTIFICATE OF GRANTOR

I, Scott Bird, owner or the authorized representative of the owner of the property described above, hereby certify that the foregoing easement is granted to the City of Troutdale.

Dated this 13<sup>th</sup> day of July, 2018

BRD Landing LLC, an Oregon limited liability company

by: SCOTT BIRD

Print Name:

President

Member

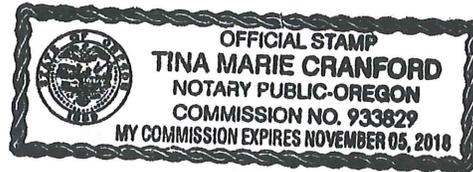
STATE OF OREGON )  
 ) ss.  
COUNTY OF MULTNOMAH )

This instrument was acknowledged before me on July 13, 2018, by Scott Bird as President of Apollo Drain Rooter services Inc.

Tina Marie Cranford

Notary Public for Oregon

My commission expires: 11/5, 2018.



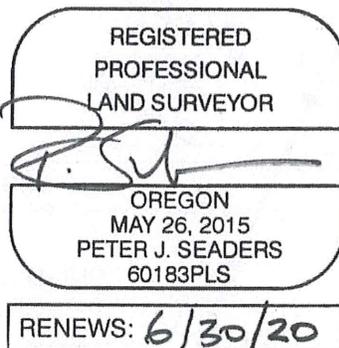


## Exhibit A

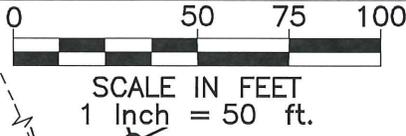
All that Property in the NW 1/4 of Section 25, Township 1N, Range 3E, W.M., conveyed to BRD Landing LLC in Document 2016-159877, Multnomah County Records, lying between a line that is a 38' offset to the right (Westerly) of the below described centerline, and a line that is a 30' offset to the right (Westerly) of the below described centerline:

Beginning at Engineer's Station 7+27.85 per Multnomah County Survey Record 60417, a point on the centerline of Harlow Road (County Road No. 1728) which lies  $S24^{\circ}55'56''E$  620.30' from the Northeast corner of the D.F. Buxton Donation Land Claim 59; continuing thence 142.31' along a curve to the left of radius 716.30', the long chord of which bears  $S23^{\circ}41'45''E$  142.07' to the point of tangency of said centerline curve; thence  $S29^{\circ}19'36''$  43.81' along said centerline to the next point of curvature; thence 148.88' along a curve to the right of radius 716.30', the long chord of which bears  $S23^{\circ}22'15''E$  148.61' to the point of tangency of said curve.

The bearings herein are based on geodetic control ties to the state plane coordinate system, using the Oregon Realtime Geodetic Network as provided by the Department of Transportation. The horizontal datum is NAD 83, Oregon North Zone 3601. The above described land contains an area of 2171 square feet, more or less.

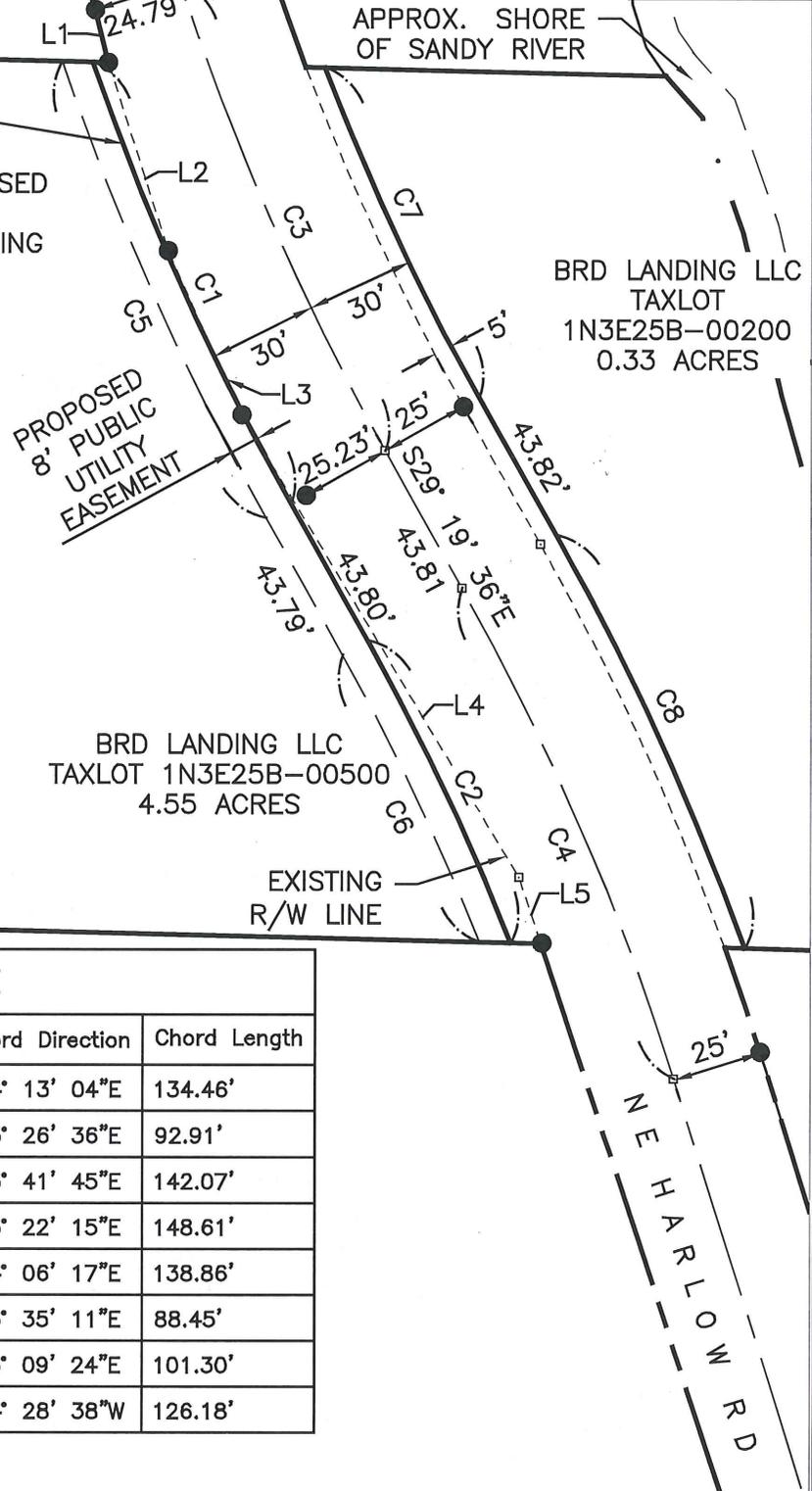


NE CORNER D.F. BUXTON D.L.C. 59  
 S24° 55' 56"E 620.30'  
 ENGINEER'S STATION  
 7+27.85 PER MCSR 60417



PROPOSED R/W DEDICATION LINE

NOTE: THE BASIS OF BEARINGS IS BASED ON GEODETIC CONTROL TIES TO THE STATE PLANE COORDINATE SYSTEM USING THE OREGON REALTIME GEODETIC NETWORK. THE HORIZONTAL DATUM IS NAD 83, OREGON NORTH ZONE 3601.



EXISTING R/W LINES		
Line #	Length	Direction
L1	15.08'	N13° 53' 49"W
L2	54.98'	N17° 47' 23"W
L3	49.94'	N24° 13' 42"W
L4	149.93'	N30° 59' 42"W
L5	19.39'	N18° 29' 42"W

CURVE TABLE					
Curve #	Length	Radius	Delta	Chord Direction	Chord Length
C1	134.64'	746.30'	10° 20' 12"	S24° 13' 04"E	134.46'
C2	92.98'	686.30'	7° 45' 46"	S25° 26' 36"E	92.91'
C3	142.31'	716.30'	11° 22' 58"	S23° 41' 45"E	142.07'
C4	148.88'	716.30'	11° 54' 30"	S23° 22' 15"E	148.61'
C5	139.05'	754.30'	10° 33' 44"	S24° 06' 17"E	138.86'
C6	88.51'	678.30'	7° 28' 36"	S25° 35' 11"E	88.45'
C7	101.39'	686.30'	8° 27' 53"	S25° 09' 24"E	101.30'
C8	126.33'	746.30'	9° 41' 55"	N24° 28' 38"W	126.18'

DATE 07.13.2018  
 SCALE AS SHOWN  
 DRAWN NMT  
 FILE 16076

**EXHIBIT B - EASEMENT**  
**853 NE HARLOW RD, TROUTDALE**

SHEET  
**EXH 'B'**  
 OF 1 SHEETS